

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

CARLSON, INC.

Plaintiff,

vs.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant.

Case No.

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332(a), 1441(a) and 1446, Defendant International Business Machines Corporation (“IBM”) files this Notice of Removal seeking to remove this lawsuit brought by Carlson, Inc. (“Carlson”), a Minnesota corporation, against IBM, a New York corporation, currently pending in the Fourth Judicial District Court, County of Hennepin, Minnesota.

In support, IBM states the following grounds for removal:

**THE COMPLAINT**

1. In 2005, Carlson and IBM entered into a Master Services Agreement (“MSA”) whereby IBM agreed to provide accounting and technology management services to Carlson for a ten-year period. (Complaint ¶ 5) In 2009, five years before the expected ten-year term, Carlson terminated IBM’s services. (*Id.* ¶ 16) IBM subsequently sought payment from Carlson for services it had performed. (*Id.* ¶ 63)

2. In its Complaint, Carlson alleges several causes of action against IBM relating to the services IBM provided pursuant to the MSA, including fraud, breach of



contract and breach of fiduciary duties. (*See id.* ¶¶ 24-57) In addition, Carlson seeks a declaratory order that the amount it owes IBM for past services be “setoff” against any judgment in its favor. (*Id.* ¶¶ 62-68)

### **SERVICE OF THE COMPLAINT**

3. On July 22, 2010, Carlson commenced a lawsuit against IBM in the County of Hennepin, Minnesota by serving it with a Minnesota state summons and Complaint. *See* Minn. R. Civ. P. 3.01 (service of the summons and complaint commences an action); *see also Duchene v. Premier Bank Metro South*, 870 F. Supp. 273, 274 (D. Minn. 1994) (holding a defendant has 30 days from the date a complaint was “served,” even if it was not filed, to remove an action from Minnesota state court).

4. This Notice of Removal is timely because it was filed within thirty days of service of the initial pleading on IBM and within one year of the commencement of this action. 28 U.S.C. § 1446(b); *Murphy Brothers v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999)

5. All pleadings, process, orders, and other filings served upon IBM in this action are filed with this Notice as required by 28 U.S.C. § 1446(a). (*See* Complaint and Exhibit A) Because the Complaint was designated under seal in the State court and because it refers to confidential proprietary information, IBM has filed it under seal here as well.

### **DIVERSITY JURISDICTION**

6. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a) and 1446.

7. Carlson is, and was at the time the lawsuit was filed, a Minnesota corporation, with its principal place of business in Minnesota. (Compl. ¶ 1) Further, Carlson's corporate headquarters are located at 701 Carlson Parkway, Minnetonka, Minnesota. (*Id.*)

8. IBM is, and was at the time the lawsuit was filed, a New York corporation with its principal place of business at Route 100, Somers, New York. (*Id.* ¶ 2) IBM's corporate headquarters is located at One New Orchard Road, Armonk, New York. (*Id.*)

9. This is a civil action in which the amount in controversy exceeds the \$75,000 statutory minimum. (*See, e.g., id.* ¶¶ 37, 48, 62-63, 68)

10. A copy of this Notice is concurrently being filed with the state court and served upon Carlson. 28 U.S.C. § 1446(d).

11. Accordingly, all requirements are met for removal under 28 U.S.C. §§ 1332, 1441, and 1446.

### **VENUE**

12. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Hennepin County, Minnesota, the place where the removed action has been pending. Further, Carlson alleges the causes of action arose within Hennepin County. (*Id.* ¶ 4)

## CONCLUSION

For the foregoing reasons, Defendant IBM respectfully requests that this case be removed to this Court for trial and determination.

Dated: August \_\_, 2010

Respectfully Submitted,

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